

1 MICHAEL SATRIS  
2 State Bar No. 67413  
3 MARGARET LITTLEFIELD  
4 State Bar No. 110938  
5 Law Offices of Michael Satris  
6 Post Office Box 337  
7 Bolinas, Calif. 94924  
8 Tel: (415) 868-9209  
9 Fax: (415) 868-2658  
10 Email: satris@sbcglobal.net

11 *Attorneys for Petitioner*  
12 *Ronald Lee Bell*

13 KAMALA D. HARRIS  
14 Attorney General of California  
15 DANE R. GILLETTE  
16 Chief Assistant Attorney General  
17 RONALD S. MATTHIAS  
18 Senior Assistant Attorney General  
19 State Bar No. 104684  
20 455 Golden Gate Avenue, Suite 11000  
21 San Francisco, CA 94102-7004  
22 Telephone: (415) 703-5858  
23 Fax: (415) 703-1234  
24 E-mail: Ronald.Matthias@doj.ca.gov

25 *Attorneys for Respondent and*  
26 *People of the State of California,*  
27 *Real Party in Interest*

28  
1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4  
5 RONALD LEE BELL,

6 Petitioner,

7 v.

8 KEVIN CHAPPELL,

9 Warden of the California  
10 State Prison at San Quentin,  
11 Respondent.

12 No. C-99-20615 RMW

13 **JOINT STATEMENT OF THE**  
14 **PARTIES**

15 **DEATH PENALTY CASE**

16  
17 **INTRODUCTION**

18 On September 30, 2013, this Court entered an Order (Doc. 220) directing  
19 the parties to file a Joint Statement within 45 days proposing how this case  
20 should proceed in light of Petitioner's medical condition. Counsel for Petitioner

1 and Respondent have consulted with one another and now submit this joint  
 2 statement in accordance with that Order.

3

4 PETITIONER'S POSITION

5 Petitioner's advanced dementia has left him profoundly incompetent for all  
 6 purposes, including incompetent to prosecute his habeas petition and  
 7 incompetent to be executed. The prognosis is that there certainly will be only  
 8 further deterioration in his condition with time.

9 This case should and can be resolved expeditiously with a negotiated  
 10 disposition that is in the best interests of the parties as well as the court. To  
 11 facilitate such an equitable and economical disposition, counsel respectfully  
 12 suggests that the Court refer this case to an appropriate magistrate judge for  
 13 settlement purposes, and in the interests of judicial economy otherwise trail or  
 14 stay further proceedings in the case until conclusion of the settlement  
 15 proceedings. Other courts in this district have taken this approach when faced  
 16 with incompetent condemned prisoners. See. e.g., *Stanley v. Chappell*, No. C07-  
 17 4727-EMC (N.D. Cal. October 25, 2013) (order referring case to magistrate judge  
 18 for settlement, following prior orders staying the proceedings to address  
 19 competency and settlement); *Gates v. Chappell*, No. 3-88-cv-2799-WHA (N.D.  
 20 Cal. May 16, 2013) [2013 U.S. Dist. LEXIS 99324 (order referring case to  
 21 magistrate judge for settlement proceedings); see also *McPeters v Chappell*, No.  
 22 1:95-cv-5108 LJO [2013 U.S. Dist LEXIS 12773 ("The case is ripe for resolution,  
 23 which, in turn will promote judicial economy and stop further taxpayer  
 24 expenditure on pointless litigation.").

25 Alternatively or in addition, this Court should stay further prosecution of  
 26 the petition in view of Petitioner's incompetence to proceed, with annual reports  
 27 on his medical condition, subject to a motion by either party to dissolve the stay  
 28 upon a showing of good cause. The considerations that inform the  
 appropriateness of such a stay here are materially different than those that

1 informed the Court's decision in *Ryan v. Gonzales*, 133 S.Ct. 696 (2013), which  
 2 concerned AEDPA petitions rather than a pre-AEDPA one as here, and where  
 3 there was no suggestion of any incompetence to be executed, let alone the  
 4 incontrovertible fact of permanent incompetence to be executed that the Court  
 5 here is presented with.

6       Indeed, the obstacles to settlement that the State identifies make all the  
 7 more salutary the indefinite stay of further proceedings that counsel for Petitioner  
 8 here proposes. And "the *holding* in *Gonzales*" emphasized here by the State, was  
 9 simply that "neither 18 U.S.C. §3599 nor 18 U.S.C. §4241 provides such a right [to  
 10 a stay] and that the Courts of Appeals for the Ninth and Sixth Circuits both erred  
 11 in holding that district courts *must* stay federal habeas proceedings when  
 12 petitioners are adjudged incompetent" to assist counsel in those proceedings.  
 13 *Ryan v. Gonzales*, 133 S. Ct. at 700 (emphasis added). By its own terms, *Ryan*  
 14 was a narrow decision that specifically eschewed giving the "district courts ...  
 15 unsolicited advice ... on how to manage their dockets." *Id.* at 708. Rather, it  
 16 confirmed that "the decision to grant a stay ... is 'generally left to the sound  
 17 discretion of district courts' [citation]," and in that case "address[ed] only [the]  
 18 outer limits" of that discretion. *Id.* The discretion that the Court would exercise in  
 19 granting a stay in this pre-AEDPA case, where it can be said with supreme  
 20 confidence that Petitioner will never become competent to be executed, is well  
 21 within those limits for fiscal reasons if no other.

22       The State proffers "a practical concern: competence might change over  
 23 time." But if so, that only reinforces the probity of a stay at this time, for  
 24 Petitioner's rational assistance of and communication with counsel would benefit  
 25 the investigation and presentation of various claims in the petition. It would be  
 26 fundamentally unfair to require counsel to litigate this petition with one hand tied  
 27 behind his back, as it were, while there is a realistic chance of two hands in the  
 28 future. The real "practical concern" here is the huge waste of resources that would  
 be engendered by further litigation prosecuting and defending against the

1 petition "to decision," as the State puts it. That is in no one's interest, certainly  
 2 not the Court's and presumably not the State's either in these times of  
 3 diminishing resources -- particularly where there is no prospect that the State  
 4 would be able to carry out the judgment even if it survived this collateral attack.

5 Finally, while the State critiques Petitioner's proposal for how this Court  
 6 should now proceed, it never proposes a more practical alternative action for this  
 7 Court to take under these circumstances. Counsel is prepared to elaborate as  
 8 necessary at any case management conference or in further pleadings why  
 9 proceeding in the manner counsel suggests furthers the interests of both parties,  
 10 the Court's interest in judicial economy, and the interests of justice.

11

12

### THE STATE'S POSITION

13 The state acknowledges that petitioner has sufficient evidence at his  
 14 disposal to establish a prima facie case that he likely is currently incompetent  
 15 within the meaning of *Ryan v. Gonzales*, \_\_\_\_ U.S. \_\_\_, \_\_\_, 133 S. Ct. 696, 700  
 16 (2013), and that his condition likely will not improve in the future. "Where there  
 17 is no reasonable hope of competence, a stay is inappropriate and merely  
 18 frustrates the State's attempts to defend its presumptively valid judgment."  
 19 *Gonzales*, 133 S.Ct. at 709. Such a stay is inappropriate—i.e., beyond the "outer  
 20 limits" of the Court's discretion, *id.* at 708—whether it be "for settlement  
 21 purposes" (a course that is itself inappropriate, as we shall explain), or for the  
 22 purpose of receiving "annual reports on his medical condition." In short, this  
 23 matter—which has been pending since 1992, and fully briefed since 2001—should  
 24 proceed to decision, for petitioner has identified no valid basis for the Court to  
 25 follow any other course. *Cf. note 1, post.*

26 The state also acknowledges that petitioner may well be incompetent within  
 27 the meaning of *Ford v. Wainwright*, 477 U.S. 399 (1986), and that his prospects  
 28 for recovery in that regard might well be similarly bleak. Petitioner has not  
 formally advanced either proposition in this Court, nor has he presented either

1 for consideration by the California Supreme Court. To be sure, any question  
 2 about petitioner's *current* competence to be executed is not ripe for adjudication  
 3 by any court inasmuch as no execution is currently scheduled.

4 Less clear to the state would be the impropriety of an effort by petitioner to  
 5 have a state court declare him categorically ineligible for execution *at any time*  
 6 (and directing that his judgment be altered to so reflect). Although the question  
 7 of "permanent incompetence" to be executed subsumes the question of current  
 8 competence—a matter that is, as we have emphasized, not yet ripe—it is perhaps  
 9 worth noting that one implicit rationale for courts' general refusal to consider  
 10 *present* competency to be executed when no execution is imminent rests on a  
 11 practical concern: competence might change over time. Thus, *if* it could be  
 12 shown in a particular case that incompetence is *hopelessly immutable*, it seems  
 13 likely that the prisoner might plausibly argue that the question is best confronted  
 14 sooner rather than later. But under current circumstances, the only *conceivably*  
 15 appropriate forum in which petitioner could press such an argument would be the  
 16 California Supreme Court. The state, of course, cannot actually know whether the  
 17 California Supreme Court might be receptive to entertaining such a contention  
 18 until its particulars are developed and presented to that court. The state has  
 19 repeatedly identified this potential avenue to petitioner during the meet-and-  
 20 confer process, but, judging from petitioner's failure to mention it in this  
 21 pleading, he is apparently disinclined to pursue it.<sup>1</sup>

22 Petitioner's suggestion that these proceedings be referred for "settlement"  
 23 is singularly misdirected. In the first place, a "negotiated disposition" that serves  
 24 both parties' "interests" would necessarily entail each party "compromising" (or  
 25 surrendering) some entitlement; presumably, petitioner has in mind his agreeing

---

26 <sup>1</sup> In light of petitioner's apparent uninterest, it is unnecessary to consider  
 27 whether, *if* petitioner were to press the state court for relief on the basis of his  
 28 assertedly "permanent" incompetence to be executed, he might be entitled to a  
 stay of these proceedings on *that* account. See *Robbins v. Carey*, 481 F.3d 1143,  
 1147 (9th Cir. 2007).

1 to forgo all further judicial inquiry into the validity of his conviction for first  
 2 degree murder with special circumstance in exchange for the state's agreeing that  
 3 the sentence portion of the state-court judgment be somehow "modified" from the  
 4 death penalty to imprisonment for life without possibility of parole.<sup>2</sup> Petitioner  
 5 does not explain (and the state cannot imagine) how petitioner could knowingly  
 6 and intelligently enter into such a "deal" while he is, as he insists, "profoundly  
 7 incompetent for all purposes." More generally, petitioner does not identify (and  
 8 the state is not aware of) any authority under which state officers and officials are  
 9 authorized to "agree" to a modification of an affirmed judgment, except by  
 10 stipulating to the issuance of a writ of habeas corpus requiring such modification.  
 11 Insofar as the state is aware, its officers and officials have no authority to consent  
 12 to the granting of habeas relief except upon satisfying themselves that the  
 13 conditions precedent to its issuance have been met; in that event, the state's  
 14 acquiescence in the granting of judicial relief would be immediate, unilateral, and  
 15 unconditional, rather than one of the "terms" of some negotiated "deal."  
 16 Accordingly, referring the instant matter for "settlement" by "negotiated  
 17 disposition" would be a pointless exercise.

18

19

Dated: November 13, 2013

20

21

MICHAEL SATRIS  
 MARGARET LITTLEFIELD

22

23

By:/s/ Michael Satris

Attorneys for Petitioner Ronald Lee Bell

24

25

Dated: \_\_\_\_\_

26

27

28

<sup>2</sup>Of course, if petitioner were both genuinely interested in avoiding the "huge waste of resources that would be engendered by further litigation prosecuting and defending against the petition 'to decision'" and "supreme[ly] confident that that [he] will never become competent to be executed," he should have been more receptive to the state's earlier suggestions for disposing of this matter. See Doc. 207 at 6 n.3; Doc. 214 at 2 n.1; Doc. 214-1.

1 KAMALA D. HARRIS  
2 Attorney General of California  
3 DANE R. GILLETTE  
4 Chief Assistant Attorney General  
RONALD S. MATTHIAS  
Senior Assistant Attorney General

5 By:/s/ Ronald S. Matthias  
6

7 Senior Assistant Attorney General  
8 Attorney for Respondent and People of the  
9 State of California, Real Party in Interest

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## CERTIFICATE OF SERVICE

Case Name: Bell v. Chappell No. C 99-20615 RMW

I hereby certify that on November 14, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### JOINT STATEMENT OF THE PARTIES

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 14, 2013, at San Francisco, California.

---

Nelly Guerrero

Declarant

---

/s/ Nelly Guerrero

Signature

40819229.doc